



20 AUG 2003

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In re Application of
AKHAVE et al.
U.S. Application No. 09/647,752
PCT No.: PCT/US98/25875
Int. Filing Date: 07 December 1998
Priority Date: 08 December 1997
Attorney Docket No.: 310048-347-US
For: CONTROLLED DROPLET FORMED
LAYERED STRUCTURES

DECISION ON PETITION

This decision is in response to applicants' "Supplemental and Renewed Petition for Revival" which is being treated as a Renewed Petition under 37 CFR 1.137(b) and Renewed Petition under 37 CFR 1.47(a) filed 30 June 2003 to accept the application without the signature of joint inventor, Ghanshyam H. Popat. Applicants' "Renewed Petition under 37 CFR 1.137(b)" filed 16 April 2003 was dismissed in a decision dated 30 April 2003.

The above-captioned national stage application became abandoned on 05 February 2001 for failure to submit an acceptable oath or declaration within the time period set forth in the "Notification of Missing Requirements under 35 U.S.C. 371 in the United States Designated/Elected Office (DO/EO/US)" (Form PCT/DO/EO/905) mailed 04 January 2001.

BACKGROUND

On 07 December 1998, applicants filed international application PCT/US98/25875 which claimed a priority date of 08 December 1997. A Demand was filed with the International Preliminary Examination Authority prior to the 19th month from the earliest claimed priority date. As a result, the deadline for payment of the basic national fee was to expire 30 months from the priority date, or at midnight on 08 June 2000.

On 04 October 2000, applicants filed a transmittal letter requesting entry into the national stage in the United States, which was accompanied, inter alia, by: the basic national fee; a copy of the international application; an information disclosure statement; and a petition seeking revival under 37 CFR 1.137(b). The petition to revive under 37 CFR 1.137(b) was granted in a decision dated 21 December 2000.

On 04 January 2001, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) must be filed. The notification set a one-month time limit in which to respond.

On 31 May 2002, applicants filed a petition under 37 CFR 1.137(b) and 37 CFR 1.47(a). The petitions were dismissed in a Decision dated 23 July 2002.

On 16 April 2003, applicants filed the present petition under 37 CFR 1.137(b) and 37 CFR 1.47(a). The petitions were dismissed in a Decision dated 30 April 2003.

On 30 June 2003, applicants filed the present petition under 37 CFR 1.137(b) and 37 CFR 1.47(a).

DISCUSSION

The above-identified application was abandoned on 05 February 2001 for failure to respond to the Notification of Missing Requirements mailed 04 January 2001.

Under 37 CFR 1.137(b), a petition requesting that an application be revived on the grounds of unintentional delay must be accompanied by: (1) the required reply, (2) the petition fee required by law, (3) a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional," and (4) any terminal disclaimer and fee required pursuant to 37 CFR 1.137(c). Applicants have satisfied Items (1)-(4).

In order to comply with the proper response requirement of item (1) above for revival under 37 CFR 1.137(b), applicants submitted the present Petition Under 37 CFR 1.47(a). Under the present circumstances, in order for the response requirement, item (1) above, to be satisfied, the petition to accept the application without the signature of joint-inventor Ghanshyam H. Popat must be grantable.

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(h), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and behalf of the non-signing joint inventor. Applicant has provided items (1), (3) and (4) under 37 CFR 1.47(a).

A review of the present petition and the accompanying papers reveal that applicant has satisfied item (2), in that the applicant has shown that a bona fide attempt was made to present the application papers, including the specification, claims, and drawings to Ghanshyam H. Popat. The steps taken are sufficient to show that the missing inventor refuses to execute the application.

Accordingly, it is appropriate to accord the national stage application status under 37 CFR 1.47(a).

CONCLUSION

The petition under 37 CFR 1.137(b) is **GRANTED**.

The petition under 37 CFR 1.47(a) is **GRANTED**.

The application will be given an international filing date of 07 December 1998 under 35 U.S.C. 363, and a date of **16 April 2003** under 35 U.S.C. 371(c).

As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the nonsigning inventor at his last known address of record.

A notice of the filing of the application under 37 CFR 1.47(a) will be published in the Official Gazette.

This application is being returned to the United States Designated/Elected Office for processing in accordance with this decision.



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AKHAVE et al.
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Attorney Docket No.: 310048-347-US
For: CONTROLLED DROPLET FORMED LAYERED STRUCTURES

Dear Mr. Popat:

You are named as an inventor in the above identified United States patent application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. 116. Should a patent be granted, you will be designated as an inventor.

As a named inventor, you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or to make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent agent or attorney presenting written authorization from you. If you care to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

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